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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT  
2006 FEB 21 P 4: 36

DISTRICT OF UTAH

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JAN E. JURASEK,

Plaintiff,

vs.

WAYNE BROWN, DR. WHITEHEAD,  
DR. FNU SPENCER, Clinical Director of  
Utah State Hospital, and MARK PAYNE,  
Administrative Head of Utah State  
Hospital,

Defendants.

BY: \_\_\_\_\_  
DEPUTY CLERK

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

Case No. 2:05CV462 DAK

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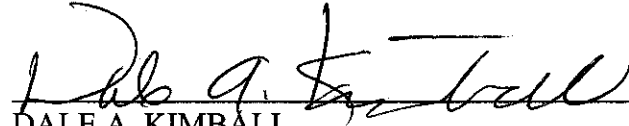
This matter is before the court on the Report and Recommendation issued by the Magistrate Judge on January 19, 2006. On July 20, 2005, this case was referred to the Magistrate Judge under 28 U.S.C. § 636(b)(1)(B). In his January 19, 2006 Report and Recommendation, the Magistrate Judge concluded that Petitioner's second and third claims, which challenge Petitioner's conditions of confinement, are not property before the court in this Section 2254 habeas petition. Rather, they must be brought separately under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Accordingly, the Magistrate Judge recommended that Petitioner's second and third claims be dismissed without prejudice.

Petitioner has not objected to the Report and Recommendation. The court has reviewed the file in its entirety and hereby APPROVES and ADOPTS the Magistrate Judge's Report and Recommendation. Petitioner's Second and Third Causes of Action are DISMISSED without

prejudice.

DATED this 21<sup>st</sup> day of February, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL  
United States District Judge